IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.591 OF 2006
IN
CRIMINAL APPLICATION NO.3180 OF 2006

The State of Maharashtra ...Applicant

vs.

Shailendrakumar Mahimachandra Gangwar ...Respondent

Mr.S.R.Shinde A.P.P. for State
Ms Karandikar i/b Mr.S.N.Karandikar for the Respondent

CORAM: A.S.OKA,J.
DATE : DECEMBER 6,2006.

P.C.:

1. Heard learned A.P.P. for the Applicant. The delay is of 478 days in preferring an Application for grant of leave to prefer an Appeal. The impugned Judgment and Order of acquittal was passed on 31st January 2005. The Application for obtaining certified copy of the Judgment was made on 9th May 2006 and the same was ready on 20th June 2006.

2. This Application for condonation of delay was heard on 24th November 2006. After hearing the learned A.P.P., it was found that there was no explanation whatsoever in this Application for the delay of more than one year in applying for certified copy of the impugned order from 31st January 2005 to 9th May 2006. After noticing this aspect, only with the view that the cause of the State should not suffer, a liberty was granted to the learned Additional Public Prosecutor to file an additional Affidavit for explaining the said delay. The learned A.P.P. has accordingly filed an

additional Affidavit of an Additional Public Prosecutor and Assistant Government Pleader, Thane to explain the gross delay in applying for the certified copy. The additional Affidavit contains only one explanation. On the day on which the impugned order was passed, the Constable on duty attached to Anti Corruption Bureau was intimated to inform about the Judgment of the acquittal to the office of the Anti Corruption Bureau and to immediately apply for certified copies of the impugned Judgment and order as well as the depositions of the witnesses on making payment of requisite fees of the certified copies. It is stated that the Anti Corruption Bureau approached the office of the Government Pleader with necessary amount on 9th May 2006. Accordingly, an application was made for certified copies of Judgment and depositions of witnesses on 9th May 2006.

2. In the said Affidavit the entire burden is shifted to Anti Corruption Bureau by stating that Anti Corruption Bureau failed to pay the requisite charges for certified copy till 9th May 2006. There is no explanation forthcoming from the concerned Officer of the Anti Corruption Bureau for the said delay. There is nothing placed on record to show that it was not the responsibility of the concerned Public Prosecutor to apply for the certified copies and that the responsibility was of the investigating agency. If what is stated in the said Affidavit is true, obviously there is a gross negligence on the part of the Anti Corruption Bureau.

3. The sum and substance of the discussion is that there is absolutely no explanation for the gross delay in applying the certified copies. The impugned order was passed on 31st January 2005 and the application for certified copies was made on 9th May 2006. As the said delay of more than one year and three months is not at all explained, the delay of 468 days in filing the application for leave to prefer an Appeal against acquittal cannot be condoned.

4. No sufficient cause is made out for condonation of delay. Application is rejected.

JUDGE